Calendar No. 50

101ST CONGRESS
1st Session

SENATE

REPORT
101-21

HATE CRIME STATISTICS ACT

MAY 1 (legislative day, JANUARY 3), 1989.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 419]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to which was referred the bill (S. 419) to require the Attorney General to collect data about crimes which manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, having considered the same, a quorum being present, reports favorably thereon without amendment and recommends that the bill pass.

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I. Purpose

The purpose of the proposed legislation is to require the Attorney General to acquire data about certain crimes which manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity. The systematic collection of hate crime statistics will provide Federal and State governments with comprehensive information about the national incidence of hate crimes. There are at present no such records kept on a national level. This information can help law enforcement agencies and local communities combat hate crimes more effectively by identifying their frequency, location, and other patterns over time.

II. Legislative History

S. 419 derives from work begun by the House of Representatives in 1985. In 1985 the Subcommittee on Criminal Justice of the House Judiciary Committee held hearings on H.R. 2455, a predecessor to S. 419. The House Judiciary Committee reported the bill favorably, and the House passed it by voice vote. That bill was pending in the Senate when the 99th Congress adjourned.

In the 100th Congress, the Hate Crimes Statistics Act, H.R. 3193, was again introduced and passed by the House of Representatives. The House Judiciary Committee reported H.R. 3193 in April 1988, and the House passed that bill overwhelmingly on May 18, 1988.

Three bills were introduced in the Senate in the 100th Congress: S. 702, sponsored by Senator Paul Simon; S. 797, sponsored by Senator Howard Metzenbaum; and S. 2000, sponsored by Senator Alan Cranston.

On June 21, 1988, Senator Paul Simon chaired a hearing of the Subcommittee on the Constitution of the Senate Judiciary Committee on those bills. Witnesses representing various concerned groups and law enforcement testified to the need for better and more accurate data. Those testifying at the hearing were: The Honorable John Conyers Jr.; the Honorable Barbara B. Kennelly; Ms. Patricia Clark on behalf of the Southern Poverty Law Center; Ms. Joan C. Weiss, on behalf of the National Institute Against Prejudice and Violence; Mr. Alan M. Schwartz, on behalf of the Anti-Defamation League of B'nai B'rith; Mr. James G. Abourezk, on behalf of the American Arab Anti-Discrimination Committee; Mr. William J. Yoshino, on behalf of the Japanese American Citizens League; Mr. Kevin Berrill, on behalf of the National Gay and Lesbian Task Force; Rev. Charles Bergstrom, a Lutheran Pastor; Dr. Steven R. Schlesinger, on behalf of the U.S. Department of Justice; Col. Leonard J. Supenski, on behalf of the Baltimore County Police Department; and Mr. Murray Friedman, on behalf of the U.S. Commission on Civil Rights.

Those who submitted testimony for the hearing were: Senator Alan Cranston, Senator John Kerry, Senator Orrin G. Hatch, the Latino Institute, the American Jewish Committee, the Organization of Chinese Americans, Inc., the American Psychological Association, the National Organization for Women, the Asian American Bar Association of the Greater Bay Area, the University of Illinois at Chicago, Pacific/Asian American Mental Health Research

Center, Asian American Resource Workshop, and the NAACP Washington Bureau.

On July 27, 1988, the Subcommittee on the Constitution by poll favorably reported S. 702 to the full committee with an amendment in the nature of a substitute from Senator Simon. On August 10, 1988, with a quorum present, by voice vote, the Committee on the Judiciary unanimously ordered the bill, S. 702, favorably reported. S. 702 was pending before the Senate when the 100th Congress adjourned.

III. Discussion

There is no national data collection system for the compilation of information on crimes motivated by hate and prejudice. Although individual incidents of hate crimes may be reported in the news, there is much about hate crimes in general that we do not know. Are the attacks that we read about isolated events, or are they symptoms of a more pervasive problem? Is hate-related violence more prevalent in particular sections of the country, or in particular kinds of communities? What groups are most frequently victimized? Are we experiencing a growth in violence motivated by racism and other types of bias?

The enactment of a Federal law requiring the systematic collection of hate crime data is a significant step. The very effort by the legislative branch to require the Justice Department to collect this information would send an additional important signal to victimized groups everywhere that the U.S. Government is concerned about this kind of crime.

Beyond that, however, the information has important practical use. Systematic data about hate crimes would be useful not only to law enforcement agencies to know where and how to focus their resources, but to policy makers at every level of government to better gauge the extent of the problem, and to local community groups to direct their educational and similar efforts.

The U.S. Commission on Civil Rights, recognizing the importance of data collection, issued a resolution on February 12, 1988, which calls on Congress to enact legislation requiring the Attorney General to collect data about hate crimes. The resolution specifically states that the collection of data is essential to determining the level of bigotry-related crime in the United States and whether such crime is on the rise.

ABT Associates of Cambridge, Massachusetts, under contract with the National Institute of Justice of the U.S. Department of Justice, prepared a report entitled "Bias Crime and the Criminal Justice Response." First among the unresolved issues and needs identified in that report is data collection and reporting.

While only a few States and communities officially monitor the incidence of hate violence (Connecticut, Illinois, Maryland, Minnesota, New Jersey, Oklahoma, Pennsylvania, Virginia), those that do find it an effective law enforcement tool. Col. Leonard Supenski of the Baltimore County Police Department, who developed and implemented the Baltimore County procedures on data collection, testified before the Constitution Subcommittee on June 21, 1988, that many important benefits have been derived from data collection.

Specifically, he testified that data collection has enabled the Baltimore County Police to develop long-term, nonreactive strategies to combat hate violence, and it has helped the Department more effectively plan its response to hate violence.

Under the Uniform Crime Reporting (UCR) program, the FBI collects and publishes national crime statistics. Pursuant to the U.C.R., police chiefs are responsible for the initial compilation of monthly statistics from individual police reports. In most States (41), the police chiefs report to a State U.C.R. agency which compiles its own data before forwarding the numbers to the FBI.

The FBI has been developing a substantial revision of the UCR since 1982, which is now complete. The new system, known as the National Incident-Based Reporting System, will differ from the old system in that more comprehensive data will be provided on a greater number of crimes. Under the old system, the UCR included only the aggregate number of eight specified crimes. Under the National Incident Based Reporting System, comprehensive information, including the race, age, ethnicity and gender of the victim and of the perpetrator will be recorded on 22 specified crimes. This information will be based on individual incident reports completed by local police officers, either as witnessed by the officers or as reported by the victims.

While S. 419 does not require the Attorney General to use the UCR to collect the data on hate crimes, the committee believes that the updated UCR would enable the Justice Department to easily implement S. 419. Whether or not the UCR is the vehicle to record hate crimes, the categories of crimes listed in the act correspond with those in the new UCR and should expedite implementation of the bill, as the FBI has already developed uniform offense definitions for these categories.

Identifying crimes motivated by prejudice can sometimes be difficult. For example, a racial epithet uttered in the course of a fight is not always evidence that the offense was motivated by hate. However, it is equally clear that there are obvious cases of bias-related motivation: a swastika on a synagogue or a cross-burning on the lawn of a black family. States and local agencies that already collect data on hate crimes have been able to develop practical, working criteria which have helped the States to make accurate assessments and which may serve as a useful guide to the Attorney General. The committee believes that the Attorney General, working with the States and organizations which already collect data, will be able to formulate effective guidelines so that an accurate determination of the motivation of the crime can be made in almost all cases. The committee recommends that any guidelines include verification and followup procedures to ensure the accuracy of the data.

S. 419 has been endorsed by a broad cross-section of organizations. Included among these are: the American Jewish Committee, the Anti-Defamation League of B'nai B'rith, the American Jewish Congress, the Leadership Conference on Civil Rights, the American Arab Anti-Discrimination Committee, the NAACP, the Southern Poverty Law Center, People for the American Way, the American Psychological Association, the American Civil Liberties Union, the National Gay and Lesbian Task Force, the Human Rights Cam-

paign Fund, the National Institute Against Prejudice and Violence, the Lutheran Office for Governmental Affairs, the Japanese American Citizen's League, the Center For Democratic Renewal, and the Criminal Justice Statistics Association. In addition, a number of law enforcement organizations have endorsed the bill including: the Police Executive Research Forum, the National Black Police Association, the Police Foundation, the National Organization of Black Law Enforcement Executives, the Police Management Association, the Fraternal Order of Police, the International Brotherhood of Police Officers, the National Association of Police Organizations, and the National Association of Blacks in Criminal Justice.

IV. Vote of the Committee

Senator Paul Simon introduced S. 419 on February 22, 1989. The bill had 29 cosponsors, including 7 cosponsors from the Judiciary Committee: Senator Hatch, Senator Metzenbaum, Senator Biden, Senator Specter, Senator Kennedy, Senator Simpson, and Senator Kohl. The bill was referred to the Senate Judiciary Committee and held at the full committee. On March 9, 1989, with a quorum present, the Committee on the Judiciary, by voice vote, unanimously ordered the bill, S. 419, favorably reported.

V. Text of S. 419

A BILL To provide for the collection of data about crimes motivated by race, religion, sexual orientation, or ethnicity

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited at the "Hate Crimes Statistics Act."

(b)(1) Under the authority of section 534 of title 28, United States Code, the Attorney General shall acquire data, for the calendar year 1990 and each of the succeeding 4 calendar years, about crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property.

(2) The Attorney General shall establish guidelines for the collection of such data including the necessary evidence and criteria that must be present for a finding of manifest prejudice and procedures for carrying out the purposes of this section.

(3) Nothing in this section creates a cause of action or a right to bring an action, including an action based on discrimination due to sexual orientation. As used in this section, the term "sexual orientation" means consensual homosexuality or heterosexuality. This subsection does not limit any existing cause of action or right to bring an action, including any action under the Administrative Procedure Act or the All Writs Act.

(4) Data acquired under this section shall be used only for research or statistical purposes and may not contain any information that may reveal the identity of an individual victim of a crime.

(5) The Attorney General shall publish an annual summary of the data acquired under this section.

(c) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section through fiscal year 1994.

VI. Section-by-Section Analysis

SECTION A

Section (a) of the bill provides that the short title of the legislation is the "Hate Crime Statistics Act."

SECTION B

Section (b)(1) requires the Attorney General under the authority of section 534 of title 28, United States Code, to acquire data about crimes that manifest evidence of prejudice based on race, religion, sexual orientation or ethnicity. The Attorney General is directed to collect data, where appropriate, on the following crimes: murder, non-negligent manslaughter, forcible rape, aggravated assault, simple assault, intimidation, arson and destruction, damage or vandalism of property. The committee included those crimes that correspond with crimes that are included in the updated UCR, as these crimes have been given a uniform definition and this will facilitate implementation. As the new UCR collects comprehensive information on all the listed crimes, including the race, age, ethnicity and gender of the victim and perpetrator, information on whether the crime was motivated by hate could be easily incorporated. Data may also be collected on other crimes where appropriate.

Section (b)(2) authorizes the Attorney General to establish guidelines for the collection of data. This section was included in response to concerns that it will be necessary to establish specific criteria in order to collect reliable data. The committee agrees that criteria should be established and recommends that the Attorney General work with both the States and organizations which collect hate crimes data in developing the appropriate criteria.

Section (b)(3) expressly states that this legislation does not create any new cause of action or right to bring an action, including an action based on discrimination due to sexual orientation. The intent of this provision was to address concern that this statute might be used as the basis for a civil rights discrimination suit. While the statute does not create any new rights, this section also makes clear that it does not limit the right to bring an action under an existing statute, including an action under the Administrative Procedure Act or the All Writs Act. Finally section (b)(3) defines sexual orientation as consensual homosexuality or heterosexuality. It is the intention of the committee that this definition not be limited to actual behavior, but also include one who is victimized because of the perception of homosexuality or heterosexuality.

Section (b)(4) ensures that the privacy of crime victims will be protected by limiting the use of the data to research or statistical purposes and by directing that the data may not contain any information that may reveal the identity of an individual victim of a crime.

Section (b)(5) directs the Attorney General to publish an annual summary of the data acquired under the Act.

SECTION C

Section (c) authorizes all appropriations necessary to carry out this act through fiscal year 1994.

VII. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, March 21, 1989.

Hon. Joseph R. Biden, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 419, the Hate Crime Statistics Act, as ordered reported by the Senate Committee on the Judiciary, March 9, 1989.

S. 419 would direct the Attorney General to collect and publish data about hate crimes—crimes that manifest prejudice based on race, religion, ethnicity, or sexual orientation—for calendar years 1990 to 1994. To fund this analysis, the bill authorizes the appropriation of such sums as may be necessary through fiscal year 1994.

CBO cannot provide a precise estimate of the cost of S. 419, because there are a number of ways to collect the required data, each with a different cost, and the bill does not specify how the Department of Justice should undertake the data collection. Information provided by the Bureau of Justice Statistics, the Federal Bureau of Investigation, and the Community Relations Service indicates that data collection costs could range from less than $1 million annually to around $10 million annually.

One alternative would be conducting a survey similar to the Bureau of Justice Statistics' National Crime Survey. This would be one of the most accurate methods, but also the most expensive, because it would require collecting data from institutions not currently surveyed, Another possibility would be requiring local police departments report incidents of hate crimes to federal authorities, who would then conduct a follow-up investigation. This could be done by including hate crimes in the uniform crime reports submitted by local police to the FBI. A less expensive method would be to require the Community Relations Service to compile data on hate crimes brought to their attention.

CBO does not expect that state and local governments would incur any significant costs if this were enacted, because none of the data collection methods would require significant additional efforts by state or local authorities.

If you wish further details on this estimate, we would be pleased to provide them. The CBO staff contact is Michael Sieverts, who can be reached at 226-2860.

Sincerely,

Robert D. Reischauer,
Director.

VIII. Regulatory Impact Statement

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that the act will not have direct regulatory impact.

IX. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the committee finds no changes in existing law caused by passage of S. 419.

X. ADDITIONAL VIEWS OF MR. THURMOND

This legislation directs the Attorney General to collect data about certain crimes "that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity." Prejudice in any form should be fought by all levels of government and should not be tolerated or condoned in any form. Prejudice is unacceptable, especially when it appears in the form of violence. However, I have concerns with regard to this legislation. Specifically, these concerns relate to the standard for collecting the data and the cost of the data collection.

First, with regard to the standard, the bill, as passed by the House during the last Congress, required that data be collected about certain crimes which "manifest prejudice." Concerns were raised that such a vague standard without further definition could lead to the collection of unreliable data. The Constitution Subcommittee, in amending this bill last Congress, required the Attorney General to establish guidelines detailing the criteria for a finding of manifest prejudice and procedures for collecting the statistics. Although this bill does not include an exact definition of manifest prejudice, the establishment of guidelines may ensure that the data which is eventually corrected will be more reliable. Notwithstanding this improvement to the bill, I believe that Congress should further clarify this vague standard of "manifest prejudice."

This report makes reference to the Uniform Crime Reporting (UCR) program as a possible vehicle by which this legislation may be implemented. Mention is made that additional crimes to those already included in the updated UCR may be collected where appropriate. I make note of these points in order to point out that the standard for data collection needs further clarification. Proper guidance concerning what crimes constitute hate crimes should be given to the Department of Justice. By giving the Department of Justice directions which are explicit, we can be assured that the executive branch is clear on the intent of Congress.

In addition, concerns about the reliability of data concerning crimes of intimidation still exist. The fact that the bill provides no definition for a crime of intimidation, and that it is difficult to determine when an individual has intended to intimidate another or when a person has actually been intimidated, is a matter which should be addressed.

Finally, with regard to the cost of the legislation, it has been estimated that the cost of this study could range from $1 million to $10 million annually. The Congressional Budget Office has stated in the cost estimate for the bill that it is impossible to give a precise estimate of the costs until the procedures for collecting the data have been established. Some have argued that cost should not be a factor and that those who question cost are not committed to wiping out prejudice in this area. Nothing could be further from

the truth. In this time of necessary fiscal restraint, such a question is entirely appropriate. It should be made clear at this point that there is no precise estimate as to how much this bill will cost.

If the Senate acts on this legislation, I believe that these concerns should be considered.

STROM THURMOND.

XI. ADDITIONAL VIEWS OF MR. GRASSLEY

This is a well-intentioned bill, with straight-forward and laudable goals. It is aimed at something we all deplore. It requires the Department of Justice to collect data on what are referred to as "hate crimes." For the reasons described below, I find the bill, at best, unworkable.

Identifying the motivation for any crime is often an elusive target. Perhaps the bill sponsors—like a former Supreme Court Justice used to say with regard to pornography—think they "know it when they see it." Indeed, a colloquy I had with the sponsors of S. 419 at our Judiciary Committee business meeting of March 9 made this deficiency quite evident.

Of course, we can all spot the obvious cases that are the target of this measure—the swastika on a synagogue; a cross-burning on the lawn of a black family's home. I am just as certain that these acts should be prosecuted to the fullest extent of the law.

Indeed, we sent a strong signal to the prepetrators of such acts just last Congress when we passed the "religious violence" bill, Public Law 100-346, which imposes criminal penalties for acts of violence intended to interfere with the free exercise of religion.

These prosecutions will go forward—with or without the enactment of S. 419—as they should, because Attorney General Thornburgh is committed to vigorous enforcement of this new statute.

But we should be extremely cautious about characterizing an offense, or implying a motive, simply based on the race, religion, sexual orientation, or ethnicity of the principals, without a careful assessment of the facts of each incident. While judges and juries sometimes make findings on the motivation for criminal acts, motive is not an element of the offense. Moreover, only a relative handful of criminal prosecutions even make it to a jury, where some evidence of motive may be presented.

S. 419 broadly delegates to the Attorney General the mandate to establish guidelines on what is a "hate crime." Thus, it implicitly concedes that determining motivation for certain acts is not readily apparent. Significantly, for a bill titled, "Hate Crimes Statistics Act," it does not require that prejudice be the sole—or even primary—motivation for the crime.

Indeed, S. 419 is completely silent on the quantum of evidence needed to show "manifest evidence of prejudice": must the prejudice be the sole, primary, or at least 50 percent cause of the act of violence? If not, it appears that any evidence, or just some evidence of prejudice—even if rebutted by other credible evidence—would be enough to presume the incident as a "hate crime."

My suggestions to require prejudice to be the "predominant" cause of the incident, or to otherwise tighten up the casual relationship between demonstrated prejudice and the criminal act, were rebuffed by the bill's sponsors.

In other contexts, of course, this committee has shown that it knows the value of explicit directions on how to weigh evidence. Last Congress, for example, we approved S. 430, The Retail Competition Enforcement Act. This bill (sponsored by—among others—Senators Metzenbaum, Simon, Leahy, Kennedy, DeConcini, Specter, Humphrey, and myself) spelled out in some detail the type and quantum of evidence sufficient to overcome a defendant's motion for summary judgment in a vertical price-fixing case under the Sherman Act. Importantly, we required a causal connection between mere "threats" and a termination of a business relationship. The result was a standard susceptible to clear understanding by contracting parties, the Justice Department, and the courts. In comparsion, the language of S. 419 is not susceptible to clear understanding.

Nor does S. 419 specify the method for collecting data, or what branch of the Justice Department would conduct the study. I understand that the Justice Department has no objection to this latest formulation, though perhaps we should not be surprised that they would favor such a wide delegation of discretion. However, I confess to some discomfort with this type of "legislating"—of simply delegating to the Executive what ought to be a legislative determination.

This is part of a larger, and most disturbing trend in the legislative branch. We pass many bills calculated to make us "feel good," but without any standards or guidance to the Executive about how to execute them, or to the judiciary about how to interpret them. Of course, Congress is heard loud and clear when the Executive or the courts can't "read our minds" to our satisfaction.

Perhaps S. 419 could not be drafted with more precision. Perhaps this is something totally within the purview of the Justice Department. But that only underscores the reason not to proceed by legislation—particularly in this case, were the Executive has already agreed to collect the data.

Finally, although recognizing that S. 419 has been approved by the Judiciary Committee, I must reiterate that its lack of objective evidentiary standards and excessively broad delegation of authority remains very troublesome.

CHUCK GRASSLEY.

XII. ADDITIONAL VIEWS OF MR. HUMPHREY

To the extent that this act results in some crimes being attributed to prejudice or hatred when, in fact, their causes are something else, its passage could be counter-productive. For example, alarming statistics about hatred and bigotry can exacerbate racial divisions. Further, distorted statistics can be used by pressure groups as justification for ill-advised legislation. Therefore, prudence dictates that statistics on crimes motivated by hatred should be as objective as possible.

Yet the nature of the data to be collected under this bill is hardly conducive to objectivity. The data apparently will be based upon crime reports received by the police. It will be impossible to prevent the inclusion of distorted, mistaken, exaggerated, or simply fraudulent crime reports, because the mere reporting of a crime is not subject to the standards of credibility or evidence that apply in the subsequent stages of the criminal process.

For example, in 1988 the city of New York was alarmed by reports of a racially motivated multiple rape of a teenage girl. Not surprisingly, the report led to heightened racial tensions. The case was investigated by New York's attorney general, who presented all the facts to a grand jury. The grand jury determined that the alleged incident was a fraud, a finding confirmed by the State attorney general, not to mention the thorough investigative reporting of the New York Times.

It appears that the New York incident would have been reported as a "hate crime" under this bill, because to raise a charge is to create a statistic, irrespective of the ultimate findings in the case after the evidence has been tested.

Apart from fraud, mistake, or exageration, the quality of the statistics will depend on the extent to which victims perceive the crime to be motivated by hatred. Persons who are understandably sensitive to prejudice—such as racial minorities and homosexuals—may be more likely to perceive and allege prejudicial motivation in crimes. Under this bill, the mere allegation of such motivation can generate hate-crime statistics. To the extent that such allegations are subjective, this bill will serve the public poorly.

There are valid reasons to question that the data resulting from S. 419 will actually provide an accurate and reliable profile of "hate crimes" in America today. If the data are flawed, they could do more harm than good. I urge my colleagues to consider these concerns and their potential adverse consequences before enacting this legislation.

GORDON HUMPHREY.

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